STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SPRINTCOM, INC., WIRELESSCO, L.P., NPCR, INC. D/B/A NEXTEL PARTNERS, AND NEXTEL WEST CORP.	)	
Petition for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement With	)	Docket No. 12-0550
Illinois Bell Telephone Company d/b/a AT&T Illinois	)	

SPRINT'S
REPLY TO EXCEPTIONS

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I. INTRODUCTION

Sprint submits this reply to AT&T's and Staff's exceptions to the ALJs' Proposed Arbitration Decision issued on April 26, 2013 ("PAD"). AT&T has little to take exception to because, as Sprint pointed out in its own exceptions, the ALJs decided nearly every issue in AT&T's favor. For the reasons set forth below, the Commission should deny AT&T's exceptions in full and Staff's exceptions to the ALJs' proposed resolution of Issue 20.

Neither AT&T nor Staff addresses the Second Circuit's recently issued decision *New England Tel. Co. v. Comcast*, Docket No. 11-2332 (2nd Cir. May 1, 2013) ("*SNET v. Comcast*") (attached as Appendix 2 to Sprint's Brief on Exceptions). *SNET v. Comcast* is the only federal appellate court decision to have considered AT&T's argument that interconnection is limited to the mutual exchange of parties' respective "end users" rather than their "networks," and the Second Circuit's rejection of AT&T's position should carry great weight.[1] Unlike the ALJs, the *SNET v. Comcast* court refused to grant AT&T the ability to "impose additional costs and competitive disadvantages upon new entrants." *Id.* at 4. That decision bears on several arguments AT&T and Staff make and, if followed, will necessitate dramatic changes to the PAD. Sprint illustrated the impact of *SNET v. Comcast* in its Brief on Exceptions, and will further address that decision as appropriate below.

[1] The only other two federal courts to reach this decision also rejected the argument AT&T makes. *The Southern New England Tel. Co. v. Perlermino*, No. 3:09-cv-1787 WWE, 2011 WL 1750224, at *6 (D. Conn. May 6, 2011) (finding AT&T's proposed reading "would add language that does not exist"); *Qwest Corp. v. Cox Nebraska Telecom, LLC*, No. 4:08CV3035, 2008 WL 5273687, at *3 (D. Neb. Dec. 17, 2008) (interconnection obligation requires ILEC to facilitate indirect interconnection between interconnecting carrier and third-party carrier).

II. ISSUE 17

> *Sprint: Should Sprint be required to establish additional Points of Interconnection (POIs) when its traffic to an AT&T Tandem Serving Area exceeds one (1) DS3?*
>
> *AT&T: (a) Should Sprint be required to establish additional Points of Interconnection when its traffic to an AT&T Tandem Serving Area exceeds one (1) DS3? (b) Should Sprint be required to establish an additional POI at an AT&T end office not served by an AT&T tandem when its traffic to that end office exceeds one (1) DS3? (c) Should Sprint establish these additional connections within 90 days?*

AT&T takes exception to the ALJs' resolution of Issue 17. AT&T's Exceptions at 2-6. To resolve Issue 17, the ALJs recommend the use of an OC-12 threshold for the establishment of an additional point of interconnection ("POI"), consistent with the Commission's long-standing precedent established in the *Level 3 Arbitration/Ameritech Decision*.[2] The ALJs properly found, as recommended by Staff, that AT&T's testimony provided no basis for overturning the Commission's prior decision. PAD at 37-38. The ALJs accepted AT&T's representation that only two carriers have reached an OC-12 level, "but [did] not agree that it shows that AT&T's network has been negatively impacted. It merely shows that most carriers do not have high traffic levels." PAD at 38. Staff takes no exception on this issue, as the ALJs accepted Staff's recommendation.

While Sprint previously opposed the imposition of <u>any</u> threshold, Sprint has not taken exception to the ALJs' decision to accept Staff's proposed OC-12 threshold. Instead, Sprint requests that the Commission deny AT&T's exceptions and confirm that AT&T did not prove that an OC-12 threshold will cause harm to AT&T's network.

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[2] *Level 3 Commc'ns, Inc., Petition for Arbitration Pursuant to Section 252 (b) of the Telecomms. Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Tel. Co. d/b/a Ameritech Illinois*, Docket No. 00-0332, Arbitration Decision (I.C.C. Aug. 30, 2000).

A. AT&T Did Not Prove Facts Sufficient to Lower the Commission's OC-12 Threshold

1. The Commission's *Level 3 Arbitration Decision* established an OC-12 threshold that has stood for over 10 years

The OC-12 POI threshold was established by the Commission when it arbitrated an interconnection agreement between Ameritech, now AT&T, and Level 3. *Level 3 Arbitration Decision*, Docket No. 00-0332 at 30-31. The Commission recognized that federal and state law allow competitors to have a single POI in a LATA, if technically feasible, and found that the OC-12 POI threshold recommended by Level 3 and Staff "does not pose any hardship for [AT&T]." *Id.* at 31. The Commission also rejected AT&T's "unsubstantiated statement that only one POI will affect service and presumably make a higher level technically infeasible." *Id.* at 31.

2. AT&T's evidence in this case did not address the key factors in the *Level 3 Arbitration Decision*

AT&T made no attempt to prove that the current OC-12 standard poses a "hardship" or would be "technically infeasible." In the DPL and its direct testimony, AT&T proposed a miniscule threshold of 24 DS1s, but provided no data whatsoever about the capacity of its tandem switches, the usage levels of its switches, or its future plans for upgrading and expanding its switching capabilities. Instead, its witness documented that Sprint delivers a great many minutes of calls. AT&T Ex. 2.0 (Albright Direct) page 24, lines 580-584. As Staff agreed, such "evidence" provided no basis to change the OC-12 standard. Staff Ex. 2.0 (Liu Direct) pages 30-32.

In its rebuttal testimony, AT&T increased its proposed threshold slightly from 24 DS1s to 28 DS1s (1 DS3). AT&T Ex. 2.1 (Albright Rebuttal) page 22, lines 513-525. And, while it documented that most carriers maintain connections smaller than an OC-12, it still failed to

produce any evidence of tandem or facilities exhaust that might cause the Commission to revisit its prior decision. AT&T Ex. 2.1 (Albright Rebuttal) pages 20-24.

With no evidence on "hardship" or "technical infeasibility" (the points that were important to the Commission in the *Level 3 Arbitration Decision*), AT&T has simply argued that, because only two carriers maintain OC-12 connections, an OC-12 standard is "no threshold at all" and a lower standard would be "more reasonable." AT&T's Exceptions at 2. Yet, AT&T cannot dispute that these were not the factors evaluated in the *Level 3 Arbitration Decision*, nor are such factors found in federal or state law.

The ALJs' decision that AT&T failed to prove facts that would justify a lowering of the Commission's OC-12 standard is supported by the record, and should be affirmed. AT&T had the opportunity to present evidence on hardship and/or technical infeasibility, but chose not to do so. Moreover, the ALJs were right not to replace the Commission's "hardship" and "technical infeasibility" test with AT&T's amorphous standard that would have the Commission simply pick a number AT&T deems "reasonable." The ALJs' proposed resolution of Issue 17 should be affirmed.

3. AT&T's "per tandem" argument is made for the first time, and is baseless

The Commission should reject AT&T's argument – made for the first time in its exceptions – that the *Level 3 Arbitration Decision* is distinguishable because it applied LATA-wide, and the language in the Sprint-AT&T ICA applies on a "per tandem" basis.

AT&T's argument should be rejected for three reasons. First, this argument has never been made before in this case and, at this stage in the proceedings, the Commission should refuse to consider it. Second, the import of the *Level 3 Arbitration Decision* lies in the Commission's focus on "hardship" to AT&T and "technical infeasibility." Whether viewed on a per-tandem

basis or on a LATA-wide basis, AT&T has presented no evidence of hardship or technical infeasibility. Thus, AT&T loses on the facts regardless of the standard that is applied.

Third, AT&T is trying to re-write history. The final contract language implementing the Commission's OC-12 decision in the *Level 3 Arbitration Decision* provided:

> 2.2.1 As ordered by the Illinois Commerce Commission in Docket No. 00-0332, in AM-IL territory, CLEC shall initially establish a single POI at any technically feasible point in each LATA in which CLEC offers local exchange service. CLEC shall establish an additional POI in a LATA once the traffic exchanged between CLEC and AM-IL with respect to that Tandem exceeds an OC-12 level (i.e., 8064 simultaneous calls).

See ICC Docket No. 01-0190, Final Contract Language for Docket 00-0032, Appendix NIM, § 2.2.1 (filed on Feb. 26, 2001). Under that language, once a second POI is established, then an additional POI is required whenever the traffic to any tandem exceeds an OC-12. This is exactly what the language approved by the ALJs here would accomplish. Under AT&T's proposed § 2.2.1.3 (as modified to accept the OC-12 threshold), Sprint would need to establish an additional POI:

> at an AT&T ILLINOIS TSA separate from the existing POI arrangement when traffic through the existing POI arrangement to that AT&T ILLINOIS TSA exceeds one(1) OC-12 at peak over three (3) consecutive months.

Under both contractual provisions, then, when traffic through a POI/tandem exceeds an OC-12, AT&T can force Sprint to purchase additional facilities from AT&T to establish another POI. AT&T's argument that this case is somehow different than the *Level 3* case should be rejected.

4. AT&T's new proposed OC-3 threshold shows the irrationality of AT&T's position

The Commission should note that AT&T's exceptions propose – for the first time in this case – an OC-3 standard. AT&T's Exceptions at 2 ("Setting the threshold at an OC-3 level, rather than an OC-12 level, would provide a more reasonable standard for carriers in Illinois."). In the DPL and its testimony, AT&T proposed a threshold of 24 DS1s. *See, e.g.*, AT&T Ex. 2.0

(Albright Direct) pages 26-28. Then, in rebuttal, AT&T increased its proposal slightly to 28 DS1s (i.e. 1 DS3), claiming that a "DS-3 proposal is reasonable." AT&T Ex. 2.1 (Albright Rebuttal) pages 22-23. Now, it argues that it would be reasonable to accept an OC-3 threshold (i.e. 3 DS3s or 84 DS1s). AT&T's Exceptions at 2, 4. AT&T's inability to decide on a standard demonstrates that AT&T's purported "evidence" lacked specifics, and that all of its various proposals are irrational. The Commission should deny AT&T's exceptions.

B. The Commission Cannot Lower the POI Threshold Below What AT&T Allows Others

Finally, on page 43 of Sprint's Post-Hearing Brief, Sprint identified confidential evidence proving that it would be discriminatory in violation of 47 U.S.C. § 252(c)(1)(2)(C) for the Commission to lower the current OC-12 standard below that which provides its wireless affiliate. Sprint incorporates that argument by reference.

III. ISSUE 20

> *Sprint: What is the appropriate use of Interconnection Facilities provided by AT&T?*
>
> *AT&T: (a) Should the ICA state that the Interconnection Facilities available to Sprint at TELRIC prices be limited to those facilities used "solely" for section 251(c)(2) interconnection? (b) Should the ICA provide that Interconnection Facilities purchased at TELRIC rates may not be used for 911 and Equal Access trunks?*

AT&T and Staff take exception to the ALJs' decision, on Issue 20, that 911 trunks connecting Sprint to an AT&T selective router can be sent over Interconnection Facilities. AT&T's Exceptions at 6-12; Staff's Exceptions at 2-10. The ALJs reasoned that Sprint's 911 traffic involves Sprint's provision of "[telephone] exchange service," and that calls to a PSAP meet the ALJs' "end user" test when AT&T is the selective router. PAD at 11. AT&T's and Staff's exceptions should be denied.

A. Application of the *SNET v. Comcast* Decision Should Eliminate the ALJ's "End User" Test

AT&T and Staff take exception to the PAD on the basis that the ALJs misapplied the "end user" test that the ALJs used to resolve Issue 19. AT&T's Exceptions at 10 (911 traffic is not "between customers of Sprint and customers of AT&T"); Staff's Exceptions at 6 (AT&T-served PSAPs are not "customers of an ILEC within the context of Section 251(c)(2)"). As Sprint explained in its exceptions, the ALJs resolved Issue 19 by imposing an end user limitation on Section 251(c)(2) that is not found within the statute, the FCC's rules, or the FCC's orders. Sprint's Brief on Exceptions at 18-20. In *SNET v. Comcast*, the Second Circuit explained that AT&T's "end user" argument is baseless:

> AT&T argues, because transit service does not involve AT&T end-users, we must conclude that it cannot constitute an interconnection obligation under § 251. However, nothing in the language of § 251 suggests that the interconnection duty relates only to the transmission and routing of traffic between a CLEC and an ILEC's end users….Therefore, the obligations associated with interconnection are not limited to situations where AT&T terminates the traffic.

SNET v. Comcast, Docket No. 11-2332, slip op. at 16.

Sprint believes the Commission will reverse the PAD and, consistent with the Second Circuit's decision (as well as the only two other two federal courts to have addressed the issue), reject the ALJs' "end user" test. Once it does so, it should deny, as moot, AT&T's and Staff's argument that the ALJs misapplied that "end user" test as to 911 calls made by Sprint's customers.

B. The ALJs Properly Found That Sprint Provides Telephone Exchange Service When its Customers Make 911 Calls

The ALJs accepted Sprint's argument on this portion of Issue 20 because they focused on the service provided by Sprint when a 911 call is made. The ALJs noted that "Sprint is providing a local exchange service to its customer that is calling 9-1-1." PAD at 11. The ALJs

meant "telephone ~~local~~ exchange service," which is the term contained in Section 251(c)(2), and is the functional equivalent of local exchange service. *See* 47 U.S.C. § 153(54) (defining telephone exchange service as local exchange service or its functional equivalent). While AT&T recognizes that the ALJs' word choice could have been more precise (AT&T's Exceptions at 9 n.2), it does not take exception to the ALJs' finding that 911 calls involve Sprint's provision of a service that is facilitated by Section 251(c)(2) interconnection. Nor does Staff.

Because the ALJs focused on the service provided by Sprint, they properly distinguished the Commission's decision in the *Intrado* case cited by AT&T and Staff. PAD at 11. AT&T and Staff acknowledge that *Intrado* focused on the provision of service "to PSAPs" by AT&T, not the provision of 911 service by a carrier like Sprint to its own customers. AT&T's Exceptions at 10; Staff's Exceptions at 6. Yet, neither Staff nor AT&T provides any reason why the ALJs are required by Section 251(c)(2) to focus on the service being provided by AT&T. To the contrary, because Section 251(c)(2) ensures that competitors like Sprint can offer services to their own customers, the ALJs correctly focused on telephone exchange service, and their analysis and conclusions should be adopted by the Commission.

C. Agreed-to Provisions in the ICA Do Not Compel a Different Result

The Commission should reject AT&T's argument that agreed-to provisions in the ICA require the Commission to reject the ALJs' proposed resolution of this portion of Issue 20. AT&T's Exceptions at 7-8. AT&T's first point is based on a clause making Sprint "solely responsible" for 911 trunks. *Id.* at 7. This simply means that Sprint does not seek cost sharing for those facilities; it has nothing to do with whether the trunks can ride Interconnection Facilities.

Second, AT&T incorrectly suggests that 911 facilities are necessarily connected through a "meet point" that is not a POI. *Id.* AT&T is correct that those facilities will be connected

through a "meet point," but is wrong in suggesting that the "meet point" cannot be a POI. To the contrary, the Selective Router is part of the tandem switch (Attach. 05 § 2.34), and many POIs are at tandem switches. Thus, AT&T's argument that 911 facilities will "necessarily" bypass the POI is unsupported and incorrect.

Third, AT&T points to a statement that 911 calls will be priced out of the special access tariff. AT&T's Exceptions at 8. AT&T does not explain how this would necessarily override an explicit Commission decision on this contested issue. Regardless, even if Sprint did have to pay tariff rates for 911 facilities, the question in Issue 20 is whether those circuits can "be sent over Interconnection Facilities." The pricing mechanism does not bear on the network engineering issue. AT&T's exceptions should be denied.

IV. TRANSIT (ISSUE 43)

What is the appropriate rate that a Transit Service Provider should charge for Transit Traffic Service?

AT&T takes exception to the ALJs' recommendation that AT&T be required to provide Transit Service at TELRIC rates, and that it be required to prove its current TELRIC rates in a new cost docket. AT&T's Exceptions at 12-16. The Commission should deny AT&T's exceptions, but should go farther than the ALJs did to ensure that there is full legal support for the ALJs' proposed result.

A. The Commission Should Find that Transit Service is a Section 251(c)(2) Service

AT&T's exceptions operate to highlight why it is so important that the Commission find Transit Service to be a Section 251(c)(2) service. *See* Sprint's Brief on Exceptions at 90-98. AT&T points to the ALJs' ruling that "the provision and pricing of transit services at TELRIC is not explicitly required by the 1996 Act or the Illinois Public Utility Act," and argues this means the Commission has no legal basis to set a TELRIC rate at all. AT&T's Exceptions at 12 ("The

Commission cannot lawfully require something that neither federal law nor state law authorizes just because it was required before."). This is, undoubtedly, an argument that AT&T will continue to make on appeal.

The Commission can and should moot AT&T's argument by following *SNET v. Comcast* and finding that Transit Service is a Section 251(c)(2) service. That court concluded, as a matter of law, that:

> It would be inconsistent with the stated purpose of the [Act] to allow AT&T to charge higher negotiated rates for this service because this would impose additional costs and competitive disadvantages upon new entrants. Such an imposition would allow AT&T to further exploit its status as a former monopolist. Thus, we conclude that the provision of transit service falls under AT&T's obligation as an ILEC and that the service must be delivered at regulated rates. (Docket No. 11-2332, slip op at 4.)
>
> AT&T argues, because transit service does not involve AT&T end users, we must conclude that it cannot constitute an interconnection obligation under § 251(c). However, nothing in the language of § 251 suggests that the interconnection duty relates only to the transmission and routing of traffic between a CLEC and the ILEC's end users.... Therefore, the obligations associated with interconnection are not limited to situations where AT&T terminates the traffic. (*Id.* at 16.)

The Commission should adopt the holding of the Second Circuit, and thereby eliminate one of AT&T's major arguments in opposition to a Commission approved TELRIC transit rate. If the Commission declines to reach this legal issue (as it has done in the past), or if it finds that Transit Service is not required by Section 251(c)(2) (contrary to federal court precedent), that will provide AT&T with ammunition in its ongoing fight to force its competitors to pay for Transit Service at supracompetitive rates.

B. State Law Does Not Prohibit Implementation of the ALJs' Recommendation

While the Commission has never found Transit Service to be required by Section 251(c)(2), it reserved the right to do so based on federal law, state law, and public policy considerations. In 1996 the Commission stated:

> [W]e clearly reserve[] the issue of whether public policy concerns might cause the Commission to impose transiting as an obligation on an incumbent local exchange carrier if the parties present it as an unresolved issue in an arbitration.

MCI Telecoms. Corp. Petition for Arbitration Pursuant to Section 252(b) of the Telecomms. Act of 1996 to Establish an Interconnection Agreement with Ill. Bell Tel. Co. d/b/a Ameritech Ill., Docket No. 96-AB-006, 1996 WL 33660256, Arbitration Decision at 17 (I.C.C. Dec. 17, 1996). But the Commission did not stop there. It went on to note that:

> [AT&T's] narrow interpretation of the term "interconnection" and its obligations under the law, suggests that it believes that it is only required to physically link its network with a single other carrier but is not required to actually do anything with the traffic it receives. The very essence of interconnection is the establishment of a seamless network of networks, and to develop fine distinctions between types of traffic, as [AT&T] would have us do, will merely create inefficiencies, raise costs and erect barriers to competition. We decline to do so.

Further, the Commission invoked the Public Utilities Act, which provides that every telecommunications carrier must "transmit and deliver … 'messages or other transmissions of every other telecommunications carrier.'" *Id.* (quoting 220 ILCS 5/13-702). Then, most damning to AT&T's current argument, the Commission rejected, as contrary to Illinois law, AT&T's "position that transit service should be provided solely at its discretion and at such rates as it may extract through commercial negotiation." *Id.* at 18-19.

These conclusions supported the Commission's adoption of TELRIC rate elements applicable to the provision of Transit Service. *Id.* at 19. And, the Commission has continued to implement its 1996 policy decision by consistently compelling AT&T to charge a Transit Service rate that had been found to meet TELRIC. Since the ALJs have properly found that AT&T failed to meet its burden to prove that its rate remains TELRIC compliant, the Commission would be fully justified, as a matter of state law, requiring AT&T to prove up a current TELRIC rate.

C. The Commission Should Make a More Explicit Finding that AT&T's Rate Does Not Meet TELRIC Standards

The ALJs did not accept AT&T's argument that AT&T's current tariff rate remains TELRIC compliant. PAD at 45. Instead, the ALJs recognized that the record evidence raised sufficient questions to warrant a new cost docket. *Id.* AT&T attempts to argue that, because the PAD does not find AT&T's rate "invalid," there is no basis to require a new cost study. AT&T's Exceptions at 15. AT&T's argument ignores the fact that AT&T is an ILEC and bears the burden to prove its costs. 47 C.F.R. § 51.505(e). The Commission should apply that rule and make an explicit finding that AT&T's current rate is not TELRIC compliant, which will cement the need for a new cost docket.

Not only does AT&T ignore its burden of proof, it has the audacity to argue that there was "no such evidence" that called into question whether its current tariff rate is equal to its forward-looking costs. AT&T's Exceptions at 15. For one, the fact (disclosed only at the hearing) that it provides Transit Service to its affiliate at less than half of its tariff rate is compelling evidence that the tariff rate must be above cost. Tr. pages 725-26 (Oyefusi). (If TELRIC rates were higher than negotiated rates, AT&T would not oppose a TELRIC pricing requirement.) In addition, Mr. Farrar, an experienced cost witness, testified that, unlike in 1998, the most efficient switching technology in use today processes calls using packet switching technology. Sprint Ex. 3.0 (Farrar Corrected Direct) page 29. These "softswitches" are significantly lower cost than legacy TDM switches. Sprint Ex. 3.0 (Farrar Corrected Direct) page 29, lines 641-642. This evidence was received into the record, called into question AT&T's unsupported assumption that at 10+ year-old rate is TELRIC compliant, and fully supports the ALJs' proposed findings. AT&T's claim that there was "no such evidence" is disingenuous at best.

Nor did AT&T "[demonstrate] that … a forward-looking cost study done today would *not* assume the use of packet switches or soft switches." AT&T's Exceptions at 15 (emphasis in original). All AT&T tried to prove was that a new cost study would not necessarily include soft switches. *See, e.g.*, AT&T's Post-Hearing Br. at 139-40 (citing to testimony that a TELRIC study would not necessarily (i.e. might or might not) assume the use of softswitches). Moreover, AT&T's position in Illinois cannot be squared with the positions it has taken publicly elsewhere. AT&T advised the FCC in 2008 that softswitches represent the current least-cost solution. Sprint Ex. 3.0 (Farrar Corrected Direct) page 29, lines 643-644; Exhibit RGF-3.1. And, it argued in Kansas that an ILEC cost study must include softswitches even if they are not currently deployed. Tr. pp. 318-327 (Currie, and Barch testimony in Kansas). The Commission should reject AT&T's argument (as the ALJs certainly did) that AT&T demonstrated softswitches would not be used in an updated cost study. There is only one way to be sure which switches now belong in AT&T Illinois's forward-looking network, and that is for AT&T to comply with the PAD and initiate a new cost docket. As Sprint stated in its Brief on Exceptions, until a Commission approved TELRIC rate is ordered, AT&T should bill an interim rate of $0.00035 per minute, subject to true-up.

V. ISSUE 41

> *Sprint: Is either Party entitled to collect compensation on any of its originated traffic? If so, what originated traffic is subject to such compensation and at what rate?*
>
> *AT&T: Is AT&T entitled to collect switched access charges on its originating InterMTA traffic? If so, at what rate?*

Staff takes exception to the ALJs' decision on Issue 41 that AT&T is entitled to collect access charges on local calls (1) made by AT&T customers, (2) delivered over the

Interconnection Facilities, and (3) completed by Sprint to its customers in another MTA. Sprint supports Staff's exceptions. *See* Sprint's Brief on Exceptions at 118-19.

Sprint does, however, disagree with Staff's statement about the routing of a locally dialed call that Sprint completes in another MTA. Staff states:

> If AT&T were aware that the call was an InterMTA call, it would send the call to the calling customer's IXC. AT&T would collect access from the IXC and the IXC would charge the customer for long distance service.

Staff's Exceptions at 11. This statement is factually incorrect. No consumer in Illinois would expect to be billed, or pay, a long distance charge for a call made to a locally dialed cell phone telephone number, regardless of whether the called party is physically located outside of the state. Sprint expects the Commission would be flooded with complaints if that happened. Consumers would correctly point out that a pre-selected IXC's long distance charge applies only when the IXC's customer calls a telephone number rated outside of his or her local calling area; IXCs do not charge their customer based on the physical location of a called cell phone. While Staff's incorrect factual statement does not take away from the merits of its exceptions to Issue 41 (which Sprint supports), the ALJs made this same error, and used it to reach the wrong outcome. *See* Sprint's Brief on Exceptions at 119. As such, it should be corrected by the Commission.

VI. MISCELLANEOUS (ISSUES 51, 52, AND 53)

A. Issues 51(b) and 51(c)

> *AT&T Issue 51: … (b) Should the ICA provide that no deposit requirement is required as of the Effective Date based upon Sprint's and AT&T's dealings with each other under their previous interconnection agreements? (c) Under what circumstances should a deposit be required and what should be the amount of the deposit?*

On Issue 51, AT&T asks the Commission to clarify that the ALJs accepted AT&T's proposed deposit amount. AT&T's Exceptions at 17-18. Sprint agrees that, although not

specifically addressed, the PAD accepted AT&T's proposed GT&Cs § 9.5, which set the deposit amount at three months of anticipated billings. Sprint has taken exception to that proposal. Sprint's Brief on Exceptions at 120-21.

AT&T also asks the Commission to clarify that the Commission did not accept Sprint's proposed contract term that, as of the effective date of the ICA, no deposit will be required. AT&T's Exceptions at 18. Sprint withdrew this proposed contract language because AT&T made "a binding representation" at the hearing that the good payment history Sprint has established under the existing ICA will carry over so that there will be no deposit required at the inception of the new ICA. Tr. at 62-63. Staff also took the position that AT&T's binding commitment eliminated the need for a contract term. Staff's Post-Hearing Br. at 67-68. Sprint does not object to an order clarifying that Sprint's proposed contract language will not be included in the ICA, so long as the Commission does not relieve AT&T of the obligation to fulfill its oral commitment made at the hearing. If AT&T is trying to void this oral commitment, Sprint opposes that request.

B. Issue 52

Is it appropriate to include good faith disputes in the definitions of "Non-Paying Party," or "Unpaid Charges"?

Issues 53(a) and 53(c)

AT&T: (a) Should a party that disputes a bill be required to pay the disputed amount into an interest bearing escrow account pending resolution of the dispute? … (c) Should the ICA refer to the Party that disputes and does not pay a bill as the "Disputing Party" or the "Non-Paying Party?"

AT&T takes exception to the ALJs' rejection, on Issue 53, of AT&T's proposal that Sprint be required to pay good-faith disputed amounts into escrow pending resolution of the dispute. AT&T's Exceptions at 20-27. AT&T's exceptions should be denied.[3]

By definition, a "good-faith disputed amount" is an amount that the Billed Party has determined is not owed to the Billing Party. Requiring that, for any disputed amount, a party must place the disputed amount into escrow would discourage the Billed Party from disputing amounts because doing so would increase working capital requirements. Moreover, if AT&T inaccurately bills Sprint, and Sprint must cover the amount of the inaccurate bill during the dispute process, AT&T will have no incentive to ensure its bills are accurate. Sprint Ex. 1.0 (Burt Direct) page 59-60, lines 1322-1330. Rather, the escrow requirement would perversely incent inaccurate bills from the Billing Party when, as here, the Billing Party and Billed Party are competitors. Sprint Ex. 1.0 (Burt Direct) page 59, lines 1304-1313.

Staff agrees with Sprint on this issue, and noted that both the FCC and the Commission have found that requiring escrows of amounts subject to good-faith disputes is unreasonable. Staff Ex. 3.0 (Omoniyi Direct) page 28, lines 629-641. Staff's Post-Hearing Br. at 71-72; *In the Matter of Sprint Commc'ns Co. L.P. v. N. Valley Commc'ns, LLC*, 26 FCC Rcd. 10780, Memorandum Opinion & Order, ¶ 14 (2011); *TDS Metrocom, Inc. Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Tel. Co. d/b/a Ameritech Illinois Pursuant to Section 252(b) of the Telecomms. Act of 1996*, Docket No. 01-0338, Arbitration Decision, at 6 (I.C.C. Aug. 8, 2001); *MCI Metro Access Transmission Commc'ns, Inc., et al. Petition for Arbitration of Interconnection Rates, Terms and Conditions,*

[3] AT&T's exception on Issue 52 is tied to Issue 53, and should be denied as well.

and Related Arrangements with Illinois Bell Tel. Co. Pursuant to Section 252(b) of the Telecomms. Act of 1996, Docket No. 04-0469, Arbitration Decision at 30 (I.C.C. Nov. 30, 2004).

AT&T attempts to distinguish the FCC's *Northern Valley* decision by claiming that case involved two bad provisions – an unreasonable escrow clause and an unreasonable dispute resolution provision. AT&T's Exceptions at 22. While it is true that Northern Valley's tariff had two unlawful clauses, that does not mean that an unreasonable escrow clause, standing alone, would pass muster. To the contrary, the FCC struck both clauses, not just the dispute resolution clause. The Commission should reject AT&T's attempt to distinguish *Northern Valley*.

Nor were the ALJs wrong to distinguish the Commission's *TRO/TRRO Arbitration Decision*, Docket No. 05-0442[4] on the basis that AT&T's proposed escrow provisions in this case were far more broad than AT&T's proposed DPL language. PAD at 76. While AT&T has carved out some small (and frankly insignificant) items from the escrow requirement, those small carve-outs leave far too much subject to escrow, unlike the focused provision in Docket No. 05-0442.

Even more importantly (and something the ALJs did not mention), the escrow obligation imposed in the *TRO/TRRO Arbitration Decision* arose only "after an independent auditor ha[d] made a determination" that the disputed amount was not in error and should be paid. Docket No. 05-0442 at 171 (emphasis added). The Commission reasoned that, where an independent fact finder has made such a determination in the course of an agreed upon dispute resolution process, it was commercially reasonable to require the party owing the money to put it into escrow if it wished to further contest the independent determination. *Id*. Here, AT&T seeks to require

[4] *Access One, Inc. et al. Petition for Arbitration*, Docket No. 05-0442, Arbitration Decision (I.C.C. Nov. 2, 2005).

escrowing of disputed amounts before any dispute resolution process begins, rather than only after the dispute is initially resolved in its favor by an independent auditor. Thus, the *TRO/TRRO Arbitration Decision* does not support AT&T's exceptions.

VII. CONCLUSION

Sprint respectfully requests that the Commission deny all of AT&T exceptions and deny Staff's exceptions on Issue 20.

Respectfully submitted,

By_____

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Date: May 13, 2013

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SPRINTCOM, INC., WIRELESSCO, L.P., NPCR, INC. D/B/A NEXTEL PARTNERS, AND NEXTEL WEST CORP. Petition for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement With Illinois Bell Telephone Company d/b/a Ameritech Illinois	)	Docket No. 12-0550

NOTICE OF FILING

To: Parties of Record

You are hereby notified that this 13th day of May, 2013, I filed, via the electronic e-docket system, with the Chief Clerk of the Illinois Commerce Commission, on behalf of SprintCom, Inc., WirelessCo, L.P., NPCR, Inc., d/b/a Nextel Partners, and Nextel West Corp., Sprint's Reply to Exceptions in the above-captioned docket.

Respectfully Submitted,

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Dated: May 13, 2013

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SPRINTCOM, INC., WIRELESSCO, L.P., NPCR, INC. D/B/A NEXTEL PARTNERS, AND NEXTEL WEST CORP.	)	
Petition for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement With	)	Docket No. 12-0550
Illinois Bell Telephone Company d/b/a AT&T Illinois	)	

CERTIFICATE OF SERVICE

I hereby certify that copies Sprint's Reply to Exceptions, in the above-captioned docket, were served upon the parties on the attached service list via Unites States First Class Mail (unless otherwise indicated) and Electronic Mail, on May 13, 2013.

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